

THE RETIREMENT VILLAGES ASSOCIATION OF NEW ZEALAND INC.

PO Box 25 022, Panama Street, WELLINGTON 6146
Phone 04 499 7090 Fax 04 499 4240



26 February 2020

Competition and Consumer Policy Team
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO BOX 1473
WELLINGTON 6140

BY EMAIL: consumer@mbie.govt.nz

**EXPOSURE DRAFT: CREDIT CONTRACTS AND CONSUMER FINANCE AMENDMENT REGULATIONS
2020**

- 1 The Retirement Villages Association of New Zealand Incorporated ("RVA") wishes to make a submission on the exposure draft Credit Contracts and Consumer Finance Amendment Regulations 2020 ("Draft Regulations").
- 2 This submission's primary focus is on Draft Regulations 4AC to 4AI and section 3 (Assessment that a borrower is likely to repay without substantial hardship) of the Ministry of Business Innovation and Employment commentary accompanying the Draft Regulations, although we also comment on Draft Regulation 4AA.

About the Retirement Villages Association of New Zealand

- 3 The RVA is a voluntary industry association that represents the interests of registered retirement village owners, developers and managers throughout New Zealand. Our members' 380 villages are home to around 43,000 older people, many of whom only have their National Superannuation to live on.
- 4 The RVA is making this submission on behalf of its members. This submission is made with the broad support of our members, after consultation with them.

Why retirement villages are impacted by the Draft Regulations

- 5 The standard model of operation of most retirement villages is that the operator offers occupation right agreements ("ORAs") to residents. Those ORAs are contracts which provide for the resident to have a right to occupy a residential unit in the village and a right to receive associated services, in exchange for making various payments to the operator including:
- (a) a capital sum paid to the operator on entry to the village; and
 - (b) ongoing periodic fees during the term of the ORA to cover the village's outgoings.
- 6 Following termination of an ORA the operator generally has an obligation to pay an amount to the resident subject to deduction of any amounts owed by the resident to the operator.
- 7 In some situations a resident may not have sufficient means to make all payments due to the operator under the ORA. The following examples are the two common scenarios:
- (a) A resident may not have sufficient funds to pay the entry payment in full on settlement of the ORA. In these circumstances, rather than reducing the entry payment, the operator may make a loan to the resident of the shortfall, such loan either to be repaid by a specified date (for example upon sale of property or maturity of an investment), or following termination of the ORA by way of deducting the loan advance from the exit payment due to the resident.
 - (b) A resident may not have sufficient funds to pay the weekly fees. In these circumstances, the operator may accrue the unpaid amounts as a progressive loan due to be repaid following termination of the ORA by way of deducting the loan advance from the exit payment due to the resident.
- 8 Some, but not all, operators charge interest or fees for these arrangements. Where an operator charges interest or fees the arrangement will fall within the scope of the Credit Contracts and Consumer Finance Act 2003 ("Act").

Our concerns with the Draft Regulations

Draft Regulations 4AC to 4AI (section 3 of the MBIE commentary paper)

- 9 The purpose of the Draft Regulations 4AC to 4AI is to further clarify and refine what is expected of lenders under the Act's requirements regarding responsible lending. We support the requirement for responsible lending. We also agree that, as a general proposition, clarification and codification of detailed process requirements that help achieve responsible lending is sensible.
- 10 Draft Regulations 4AC to 4AI will require lenders to determine whether it is likely that a borrower will make payments without suffering substantial hardship. To achieve this, Draft Regulations 4AF to 4AH will require lenders to estimate the borrower's income and expenses and verify these estimates by reference to documents provided by a borrower.

11 In most circumstances we agree that these proposed requirements make sense. However, the Draft Regulations do not recognise situations (such as those outlined in paragraph 7) where the borrower's income will not be affected by the agreement. In these cases, the Draft Regulations would require lenders to collect information and conduct income and expense assessments despite the fact that these matters are not relevant. These assessments would add cost and complexity for no benefit, and are not needed to achieve the Act's purpose.

Draft Regulation 4AA (section 2 of the MBIE commentary paper)

12 Draft Regulations 4AA(2)(a) to (c) will require a lender to determine certain aspects of a borrower's requirements. While the current wording does not expressly require it, the implication from the context and purpose of the clause, and the MBIE commentary, is that this information must be collected from the borrower.

13 In usual circumstances this makes sense. However, in some circumstances (such as those outlined in paragraph 7) the matters to be determined for the purpose of Draft Regulation 4AA(2)(a) to (c) are obvious. The active collection of information in these cases would add cost and complexity for no benefit, and is not needed to achieve the Act's purpose.

Our proposed amendments

Draft Regulation 4AE

14 The consultation paper recognises that there may be a need to provide exceptions from the Draft Regulations where the proposed requirements are inappropriate.

15 We submit that an exception to the general rule in Draft Regulation 4AE is needed for credit contracts where a borrower's income and expenses are not relevant to the affordability of the agreement because payments are made in other ways. This exception should exempt these types of agreements from the assessments of the borrower's income and expenses that are required by regulations 4AF to 4AH as there is no benefit in undertaking them.

16 This could be addressed by an additional paragraph inserted after regulation 4AE(b) as follows:

(c) *paragraph (a) does not apply where the nature of the agreement is such that the lender is satisfied on reasonable grounds that an assessment of the borrower's likely income and relevant expenses is not required in order to determine whether it is likely that the borrower will suffer hardship in making payments.*

17 In addition, we submit that the word "exceptional" should be removed from Draft Regulation 4AE(b)(iii). We anticipate this clause will apply to situations such as those outlined in paragraph 7. However, the use of "exceptional" creates uncertainty as to whether something "additional" is needed above and beyond the requirement that money other than income be available to meet payments. Given the focus is on affordability, we submit that nothing further should be required where payments are to be made in other ways.

- 18 We note the desire to avoid broad exceptions. The exception we are proposing is reasonably limited, in that it would only cover detailed process requirements relating to a borrower's income and expenses. We do not believe this would detract from the overall policy objective. Our members would still be required by Draft Regulation 4AE(b) to be satisfied on reasonable grounds that the borrower is not likely to suffer substantial hardship in making payments.
- 19 The wording we have suggested is generic, rather than specifically limited to registered retirement village operators. We suggest this is a better drafting approach as we consider it is likely that other analogous arrangements exist in other areas. However, if there was a concern about unintended consequences then the exception could be specifically limited to registered retirement village operators.
- 20 There is precedent for our proposal. The United Kingdom Responsible Lending Rules exempt (at 5.2A.15) a lender from estimating a borrower's income if they can demonstrate that it is obvious in the circumstances that the borrower is able to make repayments, such that an income assessment would be disproportionate. We note the consultation paper expresses a desire to broadly align with the Draft Regulations with UK and Australian rules and guidance.

Draft Regulation 4AA

- 21 We submit that Draft Regulation 4AA should:
- (a) expressly state whether the collection of information is required from the borrower itself (so as to provide certainty); and
 - (b) if so, provide an exception from that requirement where the lender is satisfied on reasonable grounds that information (or some of the information) does not need to be collected from the borrower in order to determine the borrower's requirements and objectives.
- 22 We note again the desire to avoid broad exceptions. We are proposing a reasonably limited exception that extends only to detailed process requirements. We do not believe this would detract from the overall policy objective. Where the exception applied our members would still be required by section 9C(3)(a)(i) of the Act to be satisfied that it is likely that the credit will meet the borrower's requirements and objectives.
- 23 As with our proposed exception from Draft Regulation 4AE we have suggested a generic exception but it could be limited to registered retirement village operators if there was a concern about unintended consequences.

Further contact

24 Thank you for the opportunity to submit on the Draft Regulations.

25 We would appreciate the opportunity to discuss this submission with you, and would be pleased to answer any question you may have.

Yours faithfully

RETIREMENT VILLAGES ASSOCIATION

A handwritten signature in blue ink, appearing to read 'John Collyns', is written over a faint circular stamp or watermark.

John Collyns

Executive Director